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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,792	05/05/2007	Ben John Halford	MARK6009	1494

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YOUNG LAW FIRM, P.C.
ALAN W. YOUNG
4370 ALPINE ROAD
SUITE 106
PORTOLA VALLEY, CA 94028

EXAMINER

HOWELL, DANIEL W

ART UNIT	PAPER NUMBER
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3726

NOTIFICATION DATE	DELIVERY MODE
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09/29/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

alan@younglawfirm.com

Office Action Summary	Application No. 10/596,792	Applicant(s) HALFORD, BEN JOHN	
	Examiner Daniel W. Howell	Art Unit 3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-25, 29-36 and 57-59 is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 26-28 and 37-56 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8-21-06</u> . | 6) <input type="checkbox"/> Other: ____. |

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1. This application is in condition for allowance except for the following formal matters:

See the items separately discussed below.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the line and numeral quality of the present drawings are poor. Note in particular that the numbers are undersized. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

3. The drawings are objected to because figures 8a, 8b, and 8c have not been submitted or clearly labeled with the drawings as originally filed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

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sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the four separate ways to adjust the height of claim 21, the vibrating means of claim 33, and the sensors of claim 34 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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5. Claims 26-28 and 37-56 are objected to because of the following informalities: on line 2 of claim 26, "10" should be deleted, and on line 5 of claim 7, the period after "data" should be deleted. Appropriate correction is required.

6. Claims 1-25, 29-36, and 57-59 are allowed. It is noted that WO '308 has been used as an X reference in the two Search Reports submitted on the IDS. This examiner has reviewed this reference and will decline to use this reference as an X or 102 reference. Without pointing to any explicit part of the WO '308 reference, the EPO report dated February 7, 2006, states that this reference "necessarily comprises" the subject matter of lines 10-16 of claim 1 of the present application. Close reading of the reference will not support that conclusion. Looking first at page 7, lines 10-16, and figure 1 of the '308 reference, a prior art device is discussed. That prior art device has several pins 12 that are vertically adjusted by a computer "which is pre-programmed with the desired contour." These pins 12 *will not be machined to a final desired contour*; all that will happen is that they will be moved from some present location to the position necessitated by the "desired contour." This is the only conclusion that one can say that this prior art device "necessarily comprises." Lines 2-11 of page 8 of WO '308 discuss a first embodiment of the actual invention. A plurality of elements 18 is vertically adjustable, and the top of these elements are indeed machined by a milling cutter 62. A drive means consisting of a threaded rod and motor are used to adjust each element 18. No explicit discussion of computer control has been disclosed regarding this vertical adjustment. Keep in mind that the device discussed on page 7 is not the same device that is discussed on page 8. That being the situation, this reference is not an appropriate X reference, nor would it be appropriate for use under 35 USC 102. The question then becomes, "Is this reference applicable under 35 USC 103?" One

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skilled in the art would conclude that the device on page 7 teaches in general that the device on page 8 could be adjusted with computer control, and that the device of page 8 could be adjusted with consideration of a "desired contour" as taught by the device on page 7. However, the device of page 7 of WO '308 does not disclose the means for 1) storing existing data representing the contour of each element; or 2) adjusting the height of the first element to adjust the Z value of the existing data to *values at least equal to said z values of said new data at said any given x, y coordinate*. Since the device on page 7 isn't going to be machined, there isn't any reason to store data representing the contour of each element, and there isn't any reason to adjust the height such that all parts of the element are above that desired contour level. There is no suggestion to provide the device of page 8 of WO '308 with these two items set forth in claim 1.

7. Any inquiry concerning the content of this communication from the examiner should be directed to Daniel Howell, whose telephone number is 571-272-4478. The examiner's office hours are typically about 10 am until 6:30 pm, Monday through Friday. The examiner's supervisor, David Bryant, may be reached at 571-272-4526.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office actions directly into the Group at FAX number to 571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify Examiner Daniel Howell of Art Unit 3726 at the top of your cover sheet.

/Daniel W. Howell/

Primary Examiner, Art Unit 3726